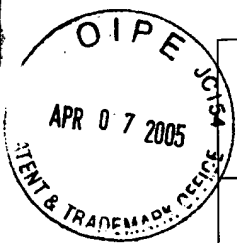


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37 CFR 1.10 - SEPARATE PAPER

ATTORNEY'S DOCKET NO.

030738

IN RE APPLICATION OF:

Lhing-Yew Li, et al.

Serial No.:

10/067,974

Filing Date:

February 8, 2002

Title:

Polynucleotide Constructs Encoding Aspartate Kinase, Aspartate-Semialdehyde Dehydrogenase, and Dihydrodipicolinate Reductase and Related Constructs, Products, and Methods

Group Art Unit

1652

Examiner

Kathleen M. Kerr

Express Mail mailing label number: EV 662115565 US

Date of Deposit: April 7, 2005

I hereby certify that this paper or fee is being deposited with the  
United States Postal Service "Express Mail Post Office to Addressee"  
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to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-  
1450.

Ellie Pingree

(Typed or printed name of person mailing paper or fee)

(Signature of person mailing paper or fee)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Lhing-Yew Li, et al.

Serial No.: 10/067,974

Filed: February 8, 2002

**PATENT APPLICATION**

POLYNUCLEOTIDE CONSTRUCTS  
ENCODING ASPARTATE KINASE,  
ASPARTATE-SEMIALDEHYDE  
DEHYDROGENASE, AND  
DIHYDRODIPICOLINATE REDUCTASE  
AND RELATED CONSTRUCTS, PRODUCTS,  
AND METHODS

Group Art Unit: 1652

Examiner: Kerr, Kathleen M.

Pittsburgh, Pennsylvania 15219  
April 7, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**PETITION FOR RIGHT OF PRIORITY UNDER 35 U.S.C. §119(e),  
35 U.S.C. §120, and 37 C.F.R. 1.78(a)(2)**

Sir:

This is a petition to request the benefit of priority of an earlier filed application in connection with the above-captioned Application. This petition is filed under 37 C.F.R. 1.78(a)(3). The reference identifying the claim to the prior filed applications by serial numbers and filing dates and the date that the present case was filed was unintentionally delayed. A statement of unintentional delay in filing the priority claim and an authorization to charge to Deposit Account No. 02-4553 the required surcharge as set forth under 37 C.F.R. 1.17(t) are included herewith.

**Remarks** begin on page 3 of this paper.

**Conclusion** begins on page 5 of this paper.

**Authorization** begins on page 6 of this paper.

**Appendix A, Supplemental Application Data Sheet** begins on page 7 of this paper

### REMARKS

Applicants respectfully make a request for the benefit of priority to an earlier filed co-pending case under 35 U.S.C. §119(e) and §120 and as set forth in 37 C.F.R. 1.78(a)(2), claiming the benefit of priority to the co-pending case U.S. Serial No. 09/722,441 (now allowed) filed on November 28, 2000, naming Paul D. Hanke, Lhing-Yew Li-D'Elia, and Holly J. Walsh as inventors. This claim for the benefit of priority is unintentionally delayed and this petition requesting said benefit of priority is accompanied by a surcharge for unintentionally delayed benefit of priority of an earlier filed case as set forth under 37 C.F.R. 1.17(t).

The earlier filed co-pending U.S. Serial No. 09/722,441 and the present application have one common inventor Lhing-Yew Li (formerly Lhing-Yew Li-D'Elia as listed in U.S. Serial No. 09/722,441 who is one and the same individual as Lhing-Yew Li listed as inventor on the present application). Said U.S. Serial No. 09/722,441 claims the benefit of priority to U.S. Provisional Application No. 60/184,130 filed on February 22, 2000 and to U.S. Provisional Application No. 60/173,707 filed on December 30, 1999. Applicants gratefully acknowledge the notice of allowability of U.S. Serial No. 09/722,441 mailed on February 9, 2005 and note for the record that the issue fee has not yet been paid as of the filing of this paper on April 7, 2005. The issue fee is due on or before May 9, 2005. U.S. Serial No. 09/722,441 is co-pending and Applicants respectfully request the benefit of priority thereto.

The present case was filed as a Request for Continued Examination (RCE) on December 7, 2004 and the deadline to claim priority to the earlier filed U.S. Serial No. 09/722,441 was four months from the filing of the parent case of the RCE. The parent case of the present RCE case was filed February 8, 2002. Thus the period for timely filing a petition for priority to the earlier

filed U.S. Serial No. 09/722,441 expired on June 8, 2002. The delay in filing this petition for benefit of priority under 37 C.F.R. 1.78(a)(2) from February 8, 2002 to the present was unintentional and Applicants respectfully request granting of the benefit of priority to the following earlier applications: U.S. Serial No. 09/722,441, filed November 28, 2000, which is a utility application claiming the benefit of priority to U.S. Provisional Patent Application Nos. 60/184,130 filed February 22, 2000, and 60/173,707 filed December 30, 1999.

Applicants enclose a Supplemental Application Data Sheet which sets forth the above-noted requested claim of the benefit of priority.

### **CONCLUSION**

Applicants respectfully submit the instant petition for the benefit of an earlier filed priority to U.S. Serial No. 09/722,441. Applicants reserve the right to withdraw this petition for benefit of priority during the course of prosecution of the present application.

**AUTHORIZATION**

A check in the amount of \$1,370.00 is enclosed for the fee associated with this Petition. The Commissioner is hereby authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 02-4553. A duplicate copy of this Petition for Benefit of Priority is enclosed for deposit account purposes.

Respectfully submitted,

Buchanan Ingersoll PC

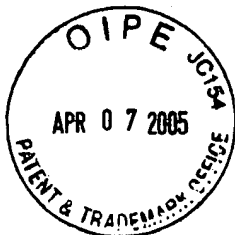
A handwritten signature in black ink, appearing to read "Craig G. Cochenour", with a long horizontal flourish extending to the right.

Dated: April 7, 2005

Craig G. Cochenour  
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Telephone: 412-562-3978

**Appendix A**





## SUPPLEMENTAL APPLICATION DATA SHEET

### Applicant Information

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### Application Information

Application Type:: Regular  
Subject Matter:: Utility  
Title Line One:: Polynucleotide Constructs Encoding  
Title Line Two:: Aspartate Kinase, Aspartate-Semialdehyde  
Title Line Three:: Dehydrogenase, and Dihydrodipicolinate  
Title Line Four:: Reductase and Related Constructs, Products  
Title Line Five:: and Methods

Supplemental 10067974 02/08/2002 04/07/2005

|                                  |        |
|----------------------------------|--------|
| Docket Number::                  | 030738 |
| Request for Early Publication?:: | No     |
| Request for Non-Publication?::   | No     |
| Total Drawing Sheets::           | 21     |
| Suggested Dwg. Figure for Pub.:: | 11B    |

### **Representative Information**

|                             |        |
|-----------------------------|--------|
| Registration Number One::   | 26,717 |
| Registration Number Two::   | 29,362 |
| Registration Number Three:: | 32,216 |
| Registration Number Four::  | 33,666 |
| Registration Number Five::  | 36,958 |
| Registration Number Six::   | 38,478 |
| Registration Number Seven:: | 40,751 |
| Registration Number Eight:: | 40,938 |
| Registration Number Nine::  | 54,468 |
| Registration Number Ten::   | 48,837 |

### **Domestic Priority Information**

|                          |  |
|--------------------------|--|
| This application is an:: | Application claiming the benefit under 35USC 119(e) of |
| Application One::        | 60/267,183   |
| Filing Date::            | February 8, 2001                                       |
|                          | and claiming the benefit under 35USC120 of             |
| Application Two::        | 09/722,441   |
| Filing Date::            | November 28, 2000                                      |
|                          | which claims the benefit under 35USC119(e) of          |
| Application Three::      | 60/184,130   |
| Filing Date::            | February 22, 2000                                      |
|                          | and  |
| Application Four::       | 60/173,207   |
| Filing Date::            | December 30,1999                                       |